18378

(18,790.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 562.

WILLIAM C. GIBSON, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 23, 1903.

1 In the Court of Claims.

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

I.—*Original Petition. Filed May* 12, 1902.

II.—*Amended Petition. Filed November* 3, 1902.

To the honorable the Court of Claims:

The claimant, William C. Gibson, respectfully represents:

I.

The claimant was on and prior to the 23d day of July, in the year 1900, a captain in the line of the Navy of the United States, and had served in the navy during the civil war and during his entire service had a creditable record.

II.

From January 22, 1900, to July 3, 1900, he was, by regular assignment, on sea duty as commanding officer of the U. S. S. *Texas.*

Under sections 1578 and 1585, Revised Statutes, all officers while at sea or attached to sea-going vessels are entitled to one ration or commutation therefor at the rate of thirty cents a day. Claimant did not receive any ration or commutation therefor while at sea or attached to a sea-going vessel as above set forth and claims commutation at the rate of thirty cents a day from January 22, 1900, to July 3, 1900, inclusive, the same amounting to forty-eight dollars and ninety cents ($48.90).

2 III.

On said 23d day of July, in the year 1900, having attained the age of 62 years, he was by virtue of the provision of section 1444 of the Revised Statutes, retired from active service, and by virtue of the provision of section 11 of the act "to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States," approved March 3, 1899, and commonly known as the navy personnel act, he was retired with the rank of the next higher grade, being that of rear admiral, which rank and grade he now holds on the retired list.

By the provision of the same section 11, he thereupon became entitled to three-fourths of the sea pay of rear admiral, which sea pay is, by virtue of section 13 of said navy personnel act and of section 1466 of the Revised Statutes of the United States, the same as that of major general in the army.

By section 1261 of the Revised Statutes of the United States, a major general in the army is entitled to pay at the rate of $7,500 a

year; therefore the claimant became entitled, upon retirement with the rank of rear admiral, to three-fourths of that sum, amounting to $5,625 a year. Instead thereof, however, he is receiving pay only at the rate of three-fourths the pay of a brigadier general, $5,500 a year, amounting to $4,125 a year, thus leaving due to him a difference of pay at the rate of $1,500 a year. This difference for the period since his retirement—July 23, 1900, to October 31, 1902, amounts to three thousand, four hundred and four dollars and nineteen cents ($3,404.19).

No other action than as aforesaid has been had on this claim in Congress or by any of the departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims three thousand, four hundred and fifty-three dollars and nine cents ($3,453.09).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

3 DISTRICT OF COLUMBIA, *ss*:

George A. King, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case, I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

GEORGE A. KING.

Subscribed and sworn to before me this 3d day of November, 1902.

MARIE A. SEARLES,
[SEAL.] *Notary Public.*

4 III.—*General Traverse. Filed November* 12, 1902.

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained and asks judgment that the said amended petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

5 IV.—*Findings of Fact, Conclusion of Law, and Opinion.*

In the Court of Claims.

(Decided January 19, 1903.)

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following findings of fact:

I.

The claimant, William C. Gibson, was duly appointed a captain in the navy, to rank from February 18, 1900. While serving in that grade, then being an officer of the navy, with a creditable record, who served during the civil war, he was retired by the following order:

"NAVY DEPARTMENT,
WASHINGTON, *June* 30, 1900.

SIR: On July 23, 1900, you will regard yourself transferred to the retired list of officers of the U. S. Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, *i. e.*, rear admiral, in accordance with the provisions of section 11 of the naval personnel act, approved March 3, 1899.

Respectfully, JOHN D. LONG, *Secretary.*

Captain William C. Gibson, U. S. Navy, commanding U. S. S. Texas."

II.

Since his retirement he has received pay at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, being three-fourths of five thousand five hundred dollars ($5,500), the pay fixed by section 1261 of the Revised Statutes of the United
6 States as that of a brigadier general in the army.

If paid at the rate fixed by said section 1261 for a major general in the army, he would receive pay at the rate of three-fourths of seven thousand five hundred dollars a year, being five thousand six hundred and twenty-five dollars ($5,625) a year, a difference over and above what he has been receiving of one thousand five hundred dollars ($1,500) a year.

III.

From January 22, 1900, to July 3, 1900, inclusive, claimant was, by regular assignment, in command of the U. S. S. Texas, a seagoing vessel in commission. During that period he was, prior to

the 18th of February, a commander in receipt of pay at the rate of four thousand dollars ($4,000) a year, and from and after that date, a captain receiving pay at the rate of four thousand five hundred dollars ($4,500) a year. He did not, while so attached to and in command of said vessel, receive any sea ration or commutation therefor, under Revised Statutes sections 1578 and 1585 (reply of Navy Department, not printed).

The commutation therefor at the rate of thirty cents per day would amount to forty-eight dollars and ninety cents ($48.90).

Conclusion of Law.

From the foregoing findings of fact, the court decides as a conclusion of law, that the petition be dismissed for the reasons stated as to the second finding in the opinion in the case of John Lowe, No. 22626, and as to the third finding in the opinion in the case of Charles M. Thomas, No. 22671.

7 The opinion in the Lowe case and that portion of the Thomas case relating to the issues involved herein, are made a portion of the record in this cause as follows:

Opinion of the Court in the Case of Lowe v. The United States, No. 22626.

The court has considered, in connection with this case, the case of Gibson, No. 22864. The claimant, a captain in the navy, with a creditable record, and who had served during the civil war, was retired on the following order:

"NAVY DEPARTMENT,
"WASHINGTON, *December* 8, 1900.

"SIR: On December 11, 1900, you will regard yourself transferred to the retired list of officers of the United States Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, *i. e.*, rear admiral, in accordance with the provisions of section 11 of the navy personnel act, approved March 3, 1899.

"Respectfully, JOHN D. LONG, *Secretary.*

"Capt. John Lowe, U. S. Navy, Pope Tube Company, Hartford, Conn."

Since such retirement the claimant has received pay at the rate of $4,125, being three-fourths of $5,500, the pay fixed by section 1261, of the Revised Statutes as the pay of a brigadier general in the army. If paid at the rate of a major general in the army, he would have received pay at the rate of three-fourths of $7,500 a year, being $5,625 a year, a difference of $1,500, a year above what he has been receiving as above stated.

This suit was brought to recover the difference between the pay of a brigadier general in the army and that of a major general.

Section 1444, Revised Statutes, is as follows: "When an officer below the rank of a vice-admiral is 62 years old he shall, except in the case provided in the next section, be retired from the active service."

Section 11 of the navy personnel act is as follows: "That any officer of the navy with a creditable record, who served during the civil war, shall, when retired, be retired with the rank and three-fourths sea pay of the next higher grade." (30 Stat. L., 1007.)

Section 13 of the naval personnel act (30 Stat. L., p. 1007) provides as follows:

"That after June 30, 1899, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army."

The first proviso in section 7 of the naval personnel act (30 Stat. L., p. 1005) is as follows:

"That each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowances as are now allowed a brigadier general in the army."

It is insisted by claimant that being a rear admiral on the retired list he ranks with a major general in the army, and therefore entitled to the same pay.

8 The question is therefore presented as to whether a captain in the navy when retired as a rear admiral, under the provisions of section 1444, Revised Statutes, and section 11 of the naval personnel act, shall receive the pay of a major general or that of a brigadier general.

It is contended by the defendants, that when the claimant was promoted to the next higher grade, to wit, rear admiral, that he became in legal effect a part of the nine lower number of the eighteen rear admirals provided for by the provisions of section 7, as quoted above.

The contention is, therefore, to be determined by the decision of the question as to which class he legally belongs. If by operation of his retirement he passes into and becomes a part of the higher number, his contention as to the pay of a major general is well founded; but if in legal effect he became a part of the lower number, he is entitled to the pay of a brigadier general, and is therefore not entitled to recover in this proceeding, having been paid at that rate.

It is said by the Comptroller of the Treasury (vol. 7, p. 164), "The naval personnel act abolished the grade of commodore and practically substituted a new grade for pay purposes within the grade of rear admiral, known as the nine lower numbers of that grade, and into this subgrade commodores were advanced."

This presents the real issue in this proceeding, and if that construction be correct, then the claimant has been paid all he is entitled to, and is therefore not entitled to recover.

It is insisted by counsel for claimant in the Gibson case—a like case, that the fact that sections 8, and 9, of the personnel act retained for purposes of pay certain officers of the rank of commodore, which

corresponds to that of brigadier, without any express provision of retirement in the next higher grade above that of captain, is an indication of a legislative intent to place the claimant, retired under section 11, of said act, in the rank or grade of a rear admiral having pay of the higher number; that without qualification the retirement of the claimant was to the full pay of a rear admiral without diminution incident to the numbers in the list of admirals.

In support of the theory of the plaintiff's right to recover, our attention has been cited, in the case of Gibson, argued in connection with this case, to the decision of the Supreme Court in the case of *Rodgers v. The United States* (185 U. S., p. 83), affirming the decision of this court in 33 C. Cls. R., p. 266, in which the Supreme Court says:

"Prior to the act of March 3, 1899, the corresponding ranks of officers of the navy and the army were rear admiral and major general, commodore and brigadier general, captain and colonel. By that act the rank of commodore was abolished, although that of brigadier general was undisturbed. No change was made in the relative rank of captain and colonel, or of rear admiral and major general, but the legislation left one rank in the army to which there was no corresponding rank in the navy. The statute in effect li ted the rank in the navy which was corresponding to that of brigadier general in the army to that of rear admiral, and corresponding with that of major general in the army."

It is contended that this definition of the relative rank between the officers of the army and navy tends to strengthen the claims of the plaintiff.

The decision settles the rank of the claimant, but that does not settle the question in issue in the case.

9 It is said in that connection, that there is no exception in the terms of the law which justifies the claimant being placed on the lower basis of pay, but in reply to that it may be said that there is no provision of the law placing him on the higher basis, the pay of an admiral.

The statute has made a distinction in pay of the admirals on the active list by a classification by numbers, and upon that classification has based the emoluments of the rank, and when the claimant is placed in the rank, he confronts two conditions, which may from the pay be called the higher and lower number.

It is ably argued by the counsel in the case of Gibson, No. 22864, and in this case, that there is no room for construction of the act upon which the claimants' right is based; that the words of the law are plain and unambiguous, and therefore it is the duty of the court to enforce the statute by the application of its terms and language. Many authorities are cited so sustain the theory, that where the words are plain and unambiguous there is no room for construction or interpretation; and therefore the simple duty of the court is to apply the law as by its terms it has been enacted by the legislature. It is said in substance that section 11, does not provide that a captain who has served during the civil war upon retiring with the rank of a rear admiral shall receive less than the rank of a rear admiral, and that the classification of higher or lower numbers is

intended for the active list of the navy, and has no application to the claimant, he being on the retired list; that if it had been the intention of Congress that the claimant was to receive the pay of a brigadier general, it would have been so provided in the statute, and that in the absence of any such provision the statute must be interpreted, not from conditions existing in the retired list, but from the words of the law. In support of the theory that where the real meaning of the statute is plain and there is no room for ambiguity, it is the duty of the court to enforce it according to its very language.

Our attention has been cited to the cases of *Lake County v. The United States* (130 U. S., 662, 663); *United States v. Tyler* (105 U. S., 244); *Thornley v. The United States* (173 U. S., 310); *Queen v. Poor Law Commission* (6 Adolph and Ellis, 66); *County Seat of Linn County* (15 Kansas, 501), and other cases, establishing the well-settled doctrine that statutes are to be applied and not construed when no doubt arises from the words and provisions of the law. We have carefully examined the cases relied on by counsel in both cases; but do not find that they settle the controversy arising upon the words and terms of the various statutes in relation to the subject-matter of this proceeding, as contended by claimants.

In the construction of the thirteenth section of the personnel act, and the section of said act which makes a distinction in the pay of rear admirals dependent upon their grade in numbers, we are dealing with a condition arising from the proviso making such distinctions, and must deal with that condition in the most reasonable way in determining the will of the legislature. The two sections taken together require construction and interpretation, and we are not confined to the application of the mere words of the statute. Where the words are plain and unambiguous the duty of the court is to apply the plain words of the statute; but when the subject-matter of the law is somewhat variable, then it is the duty of the court to so interpret or apply the words of the law as is most reasonable and just to such conditions, and thereby effectuate the intent of the legislature. Upon the transfer of the claimant to the retired list of the navy, by operation of law he succeeded to the next highest rank as a rear admiral it is true, but in that rank we find a classification as to pay; that classification has a higher and lower grade of pay, one-half receiving the sum of $7,500 and the other half the sum of $5,500. The question in this case is not a question of rank but of pay, and the next highest pay to a captain (the rank of commodore being abolished by the personnel act) is that of an admiral in the lower number of the list of admirals.

As has been said, this is a question of pay and not of rank in the active list of the navy, and we find a classification of admirals as to pay, the higher numbers receiving the larger pay and the lower numbers the smaller pay. The intent of the personnel act as shown by the words of the statute was to promote the claimant to the corresponding rank in the army, but the rank in the navy corresponding to the rank in the army has two grades of pay, depending on the number which is held by the respective officers, thereby estab-

lishing a variety in the condition of pay. Promotion unless otherwise ordered is by regular gradation, and each step is presumed to be taken unless otherwise provided. Applying that rule to the case of the claimant, his first step being promotion of pay would be into that grade having a lower rate of pay, and not into the grade having the right of higher pay.

The main object of the act of March 3, 1899, in dealing with the rights of the claimant was promotion for the purpose of pay, and not of rank; and the qualifications on that promotion "with rank and three-fourths sea pay of the next higher grade, *i. e.*, rear admiral," as stated in the order, following the substance of the statute, must mean the pay of a brigadier general, that pay corresponding with the pay of the nine lower numbers on the active list.

Pay and not rank being the paramount purpose of the law, we must regard the grades of pay which we find incident to the active list of the navy, and at the threshold of those grades looking at and for the "next higher" we find as the lowest grade of pay the pay of a brigadier general, and keeping in view the idea of it being a question of pay, we must adopt as the "next higher" the lower grade of pay.

In support of this theory of the law the case of Rodgers, *supra*, may be cited, in which it is said in the opinion of the Court of Claims (36 C. Cls. R., 275): "That for the purpose of pay a distinction is created by the act (R. S., sec. 1366) in the grade of rear admiral and special provision therefor."

In affirmation of the decision of this court the Supreme Court says:

"The individuals thus raised in rank were not so raised on account of distinguished services or for any personal reason, but simply in consequence of the abolition of the official rank they had held. Is it unreasonable to believe that Congress thought it unwise to give to those officers (who had neither by length of service or by personal distinction become entitled to the position of rear admiral, as it had stood in the past) all the benefits of such position? Would it be unnatural for Congress to bear in mind those who, by length of service or by personal distinction, had already earned the position, and provide that in, at least, the matter of pay there should be some recognition of the fact? Again, is it unreasonable to believe
that Congress intended that those officers whose past services
11 placed them according to the prior relative rank side by side with brigadier generals of the army should not, by a mere change of statute, be given a benefit in salary which was not at the same time accorded to brigadier generals in the army? May not this explain its action in so dividing the rear admirals into two classes—one composed substantially of former rear admirals, equal both in rank and pay with major generals in the army, and the other of those who in the past were only commodores, to whom was given the rank of rear admirals but the pay of brigadier generals in the army?"

It is the conclusion of the court that the claimant, for the purpose of pay, falls within the lower numbers of the rear admirals having

the pay of a brigadier general in the army and having been paid at that rate, the petition is therefore dismissed.

Extract from Opinion of the Court in the Case of Charles M. Thomas v. The United States, No. 22671.

6. The claim for commutation of sea ration under Revised Statutes, sections 1578 and 1585, while attached to a sea-going vessel, is claimed as additional to the allowances provided for by section 13, act of March 3, 1899. Those sections are:

"SEC. 1578. All officers shall be entitled to one ration, or to commutation therefor, while at sea or attached to a sea-going vessel."

"SEC. 1585. Thirty cents shall in all cases be deemed the commutation price of the navy ration."

Prior to the passage of the act of March 3, 1899, all officers of the navy "while at sea or attached to a sea-going vessel," were entitled to the ration or the commutation price therefor.

The defendant's contention is that by the provision of section 13 those sections of the Revised Statutes are repealed by necessary implication. The provision of section 13 relied upon is: "That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

The first and obvious rule of construction invoked by the claimant is that repeals by implication are not favored, and that if the provisions of said sections 1578 and 1585 are not repugnant to said section 13 the statutes should be construed together and effect be given to each.

Counsel on both sides have ably presented their views and cited numerous authorities in support of their respective contentions. The question is one purely of construction, if construction be allowable under the phraseology of the section.

From the increase in the pay of officers of the navy, as shown by the act of March 3, 1899, the court must assume either that there was some complaint, founded in justice, on the part of the officers of the navy because their pay and allowances were less than officers of corresponding rank in the army, or that the Congress, recognizing such inequality, sought to right it. The result was the passage of the act of 1899, by the express provisions of which the officers of the navy therein classified are given "the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army."

12 The question is, What did the Congress mean by the language used? The claimant's contention is: "That the granting of the same pay and allowances operates as a repeal of the old navy pay and allowances only where the possession of the old navy pay and allowances is inconsistent with the receipt of the army pay and allowances." They concede that "in granting army pay there is an implied repeal of the navy pay, because there is an inconsistency

between the receipt of both army and navy pay." And further that "the granting of army mileage repealed the navy mileage." But they say "the sea ration is an allowance which is not inconsistent with army allowances, an allowance for which no substitute is offered by the grant of army allowances," and which is "peculiarly appropriate to naval service for which there cannot be an army equivalent."

The act then, it is conceded and rightly so, operates to repeal by implication the prior acts granting pay and mileage to naval officers; and in addition thereto the act of 1899 grants to naval officers the army allowances for quarters and fuel when on shore, an allowance not theretofore granted to naval officers.

Therefore, in these respects it may fairly be said that the inequality in compensation theretofore existing between officers of the army and navy were corrected by the act of 1899. That is to say, they are given the "same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army."

Thus officers of the navy were not only given the same pay and allowances (except forage) to which officers of the army were entitled at the time the act was passed, but the act contains a provision making future legislation, in respect to such pay and allowances, applicable to naval officers, thereby indicating the purpose of the Congress to maintain the policy of equality thus established.

The only allowance excepted is for forage, while the only exception in pay is, as set forth in the first proviso, "that such officers, when on shore, shall receive * * * fifteen per centum less pay."

Another significant provision in the section, however, is the last proviso, which reads:

"*And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law."

That proviso, though by its term applicable to the whole act, excepts from the purview of section 13 those commissioned officers of the navy whose pay would thereby be reduced, and provides that as to them they "shall continue to receive pay according to existing law." And that such officers then in the service, who might thereafter be promoted, should continue to receive the benefit of that provision, the Congress, by the naval appropriation act June 7, 1900 (31 Stats. L., 684–697), provides that "section thirteen of the act approved March third, eighteen hundred and ninety-nine, entitled 'An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States," is hereby so amended as to provide that nothing therein contained shall operate to reduce the pay which, but for the passage of said act, would have been received by any commissioned officer at the time of its passage or thereafter."

The original proviso to section 13 excepted from the purview thereof the commissioned officers "now in the navy" whose "present

pay" was thereby reduced, while the amendment thereto extends the exception so as to apply to the pay such officers may receive thereafter in case of promotion to higher grades.

We have thus pointed out the exceptions which we think material to aid us in ascertaining the meaning of section 13 as applicable to the present case. That is to say, the exception to army allowance is forage; the exception to army pay is when on shore, and then to guard against reducing the pay, then being received, section 13 excepts from the operation of the act those officers whose pay would thereby be reduced and expressly permits them to "continue to receive pay according to existing law."

If the Congress intended to continue the naval ration, it would seem that the place so to express it would have been in the proviso, wherein such officers are protected against any reduction of their old navy pay.

The words "same pay and allowances" would seem to indicate that the Congress intended, except as therein provided, to conform the pay and allowances of the commissioned officers of the line of the navy and of the medical and pay corps to the pay and allowances of "officers of corresponding rank in the army." Had the word "allowances" been omitted from the section, there would be much force in the claimant's contention. But the act embraces both subjects and the language justifies the conclusion that the act was intended as a new system for both pay and allowances.

The words "same pay and allowances, except forage," can mean but one thing, and that is that, after June 30, 1899, the commissioned officers of the line of the navy and of the medical and pay corps "shall receive the same pay and allowances, except forage," as now is or may hereafter be provided by law "for the officers of corresponding rank in the army."

Certainly those words would not be satisfied by giving naval officers less pay and allowances than therein provided for, nor would they be satisfied by giving them more, except as therein expressly provided for. It was to guard against giving them less pay than they were then receiving, that the proviso was added, but we find no such provision saving to them the naval ration.

While, on the other hand, the acceptance of navy pay, when higher than army pay, does not operate to deprive such officers of the other provisions of the section granting them army allowances when on shore, and this, we think, materially strengthens the views we have expressed herein, *i. e.*, that all the pay and allowances to which such officers are entitled, except as therein provided, are embraced in the act of 1899.

To hold that the words *same pay and allowances* are inconsistent with prior acts granting pay and mileage to naval officers, though consistent with the act granting an allowance for a ration, would be drawing a distinction without a difference. The words "same pay and allowances" embody a new system applicable to naval officers and must have a meaning independent of the prior acts covering the same subjects, except in those particulars as therein specially provided. That is to say, to continue the sea ration to naval officers,

there must be added to the words "same pay and allowances" another proviso to the effect that such officers shall, in addition thereto, continue to receive the ration provided for by a prior act. To add those or equivalent words would be legislation.

Therefore, in the absence of some such provision all the pay and allowances to which officers of the line of the navy and of the medical and pay corps are entitled, except as therein expressly provided, are covered by the language in the purview of the section.

The word "same" means identical, not different or other, and to put a different construction on the language used would be a violation of the well-known rule that where the language is free from ambiguity it is not allowable to interpret it.

14 While the rule is well established that where there are two acts on the same subject effect should be given to both if possible, yet the further equally well-established rule is "if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates, to the extent of the repugnancy, as a repeal of the first; and even where the two are not in express terms repugnant, yet if the later act covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." (*United States v. Tynen*, 11 Wall., 88, 92, and authorities cited therein.)

The act of 1899 covers the whole subject of pay and allowances to the officers of the navy embraced in the purview of section 13, among which is the provision, new to naval officers, for army allowances for quarters and fuel as provided by Revised Statutes, section 1270, made applicable to naval officers by said section 13 when on shore.

The present case seems to come fairly within the decision last cited. Section 26, act of 1899, being the last section thereto, provides: "That all acts and parts of acts so far as they conflict with the provisions of this act are hereby repealed."

We therefore reach the conclusion that sections 1578 and 1585, granting to naval officers while at sea a ration, are inconsistent with and repugnant to the act of 1899 substituting army pay and allowances for the pay and allowance theretofore allowed to officers of the navy, and being repugnant to said act of 1899 they are, if not by the express provision of section 26, above cited, necessarily repealed by implication.

V.—*Judgment of the Court.*

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

At a Court of Claims held in the city of Washington on the 19th day of January, 1903, judgment was ordered to be entered as follows:

The court on due consideration of the premises, find in favor of

the defendants, and do order, adjudge and decree that the petition be dismissed.

BY THE COURT.

15 VI.—*Appeal to the Supreme Court of the United States and Allowance of Same.*

In the Court of Claims.

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

Appeal.

Now comes the claimant, William C. Gibson, and appeals to the Supreme Court of the United States from the judgment of this court entered on the 19th day of January, 1903, dismissing its petition, and moves for an allowance of this appeal.

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

Filed January 20, 1903.

The aforesaid application for the allowance of the appeal having been filed in open court January 20, 1903, it was ordered that the same be allowed as prayed for.

BY THE COURT.

16 In the Court of Claims.

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact, conclusion of law and opinion of the court, of the judgment of the court, of the application for and allowance of the appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 20th day of January, 1903.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Endorsed on cover: File No. 18,790. Court of Claims. Term No. 562. William C. Gibson, appellant, *vs.* The United States. Filed January 20th, 1903.